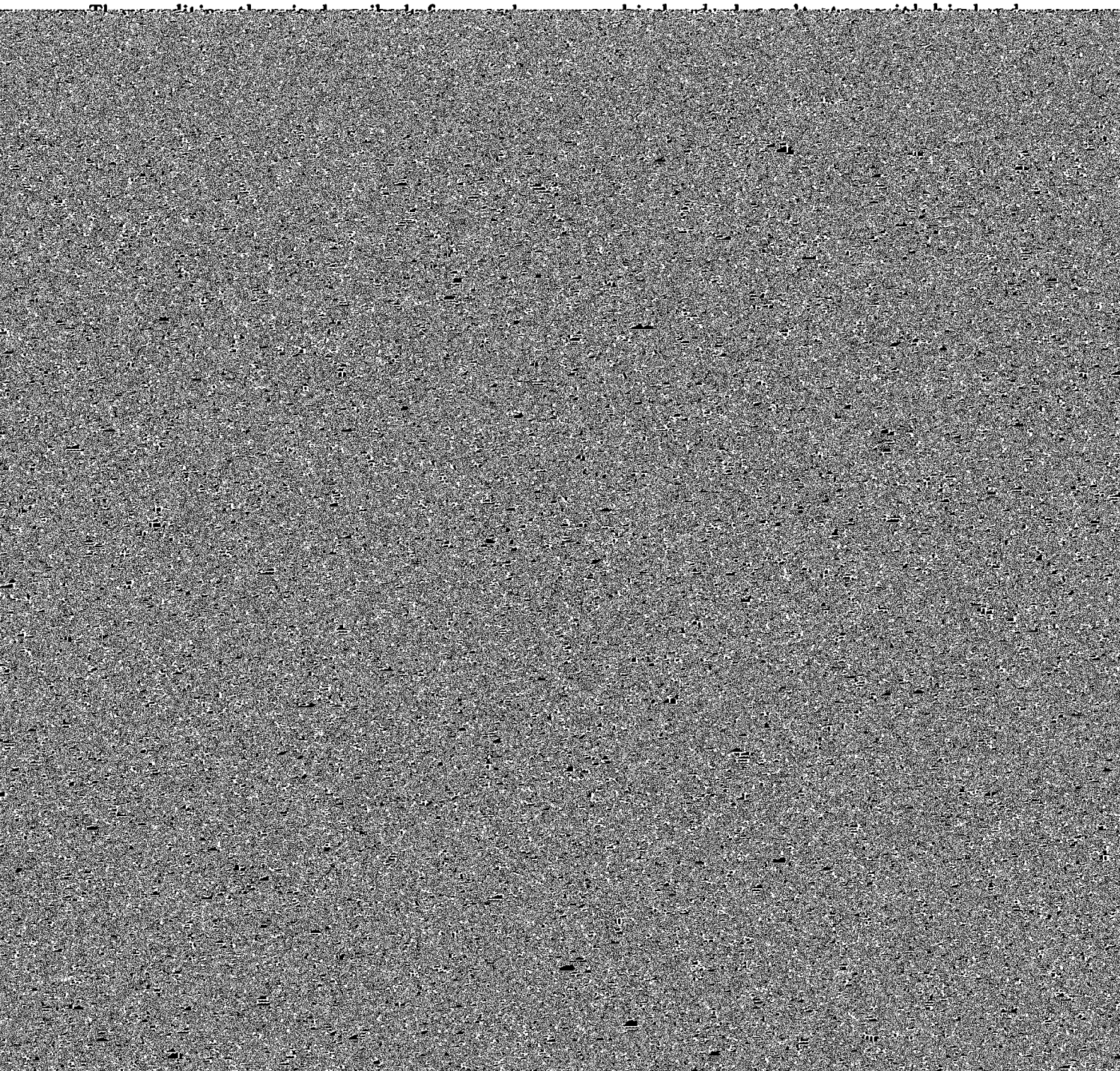
has not been widely noticed, not widely recognized, as being so integral to the sttaute itself. It's usually thought of as a sort of sugar coating, icing on a cake. It isn't that at all. This section is a speech in favor of a legislative declaration by every state legislature in the country of something that Congress had already done as a matter of Federal policy in the statute establishing the Soil Conservation Service as an agency.

makes the conservation of soil and the control of erosion of the other lands difficult or impossible. This is the first statement in state law, to my knowledge, of the fact that soil erosion isn't just a matter of every man's right to go to hell in his own way, every man's right to do as he pleases with his own lands. This is calling attention to the fact that what a man does in exercising his right, which no one questions, to do as he pleases on his own lands stops where what he does



contour farming, land irrigation, seeding and planting of waste, sloping, abandoned or eroded lands"--what we came a short time after that, to call submarginal lands--"to water conserving, erosion preventing plants, trees and grasses. Forestation and reforestation. Rotation of crops, soil stabilization with the various kinds of trees and grasses. Retiring runoff by increasing absorption of rainfall. And then, complete retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded."

All of the strands of thought that are outlined in subsections "a," "b," and "c" are brought together in the final subsection "d."

HELMS: One question. By mentioning specifically what we now call measures and practices ...

GLICK: Corrective methods ...

HELMS: You don't know what future technology might bring. Do you limit yourselves in the law by specifically mentioning them?

GLICK: No. We did not think of specifically protecting ourselves by indicating that new technology, the results of further research, may indicate other corrective measures that are needed. That we did not think of and didn't say. There is nothing in the section as drafted that would obstruct the addition of other methods. Some of the phrases are so comprehensive and broad. For example, increasing absorption of rainfall. Then we said, erosion preventing plants, trees and grasses. A great many new varieties of plants, trees and grasses may come to be discovered by later research. And then we say also, "Among the procedures necessary for widespread adoption are...". Which also opens the door to adding others as knowledge develops. Very well, the rest of subsection "d" is a sort of waving of the flag and justification of doing what all of these summarized facts would seem to indicate.

Let's glance together down at subsection three to see whether any of the definitions included there require comment. We are looking through the various definitions and there is only one that I think does need particularly to be commented on. We created a new term, land occupier. Not that either of those two words in that phrase are new words. Normally, statutes of this type speak of landowner or tenant. The owner, the tenant, and the sharecropper are the three types of relationship of man to the land that normally get involved and affected by agricultural programs. But we wanted a term that would include both the owner and the tenant where that's appropriate. Furthermore, there may, in some cases, in a great many cases, particularly in the South at the time, be an owner, a tenant and a sharecropper. Or the tenancy may take the form of sharecropping. There, the owner's obligations are normally limited to and confined to his share of the crop. In turn, the tenant's obligations are normally considered as limited to and defined by his share of the crop, where there is a sharecropping arrangement. But that wouldn't do for this purpose. For this purpose, erosion control practices become the obligation of anybody who conducts operations on the land. When we come

later to conservation ordinances and land use regulations, where the public power to regulate private land use comes into play, there must be no escape or loophole, on the theory, "I may be the owner, but I don't operate the land. It's leased." Or worse yet, "My obligations as an owner are entirely limited to one-tenth of the crop or one-half of the crop, and therefore, you must be careful about your constitutional power to impose costs upon me because I am an owner."

We worked our way through that problem

the obligation may run beyond his use, particularly in a year in which more or less expensive operations may need to be introduced.

Then we come to section 4. The bill establishes, in every state that adopted the bill, a state soil conservation committee. The section "a" of section 4 includes a provision which was quite novel, unusual in agricultural legislation. It died a slow but natural death. The provision is that the state soil conservation committee may invite the Secretary of Agriculture

this mean that the state committee and the governor of the state will have no voice whatever in choosing this member of the committee? There's nothing in the bill requiring confirmation by the U.S. Senate, of course. But there isn't anything in the bill requiring approval by the governor, or by anyone else. Our answer was, "The state has complete control." When a state statute says that the committee may invite the Secretary of Agriculture, they don't have to invite anyone. When they are considering inviting him, there is nothing to prevent them from saying to the Secretary of Agriculture, "We want an understanding about the kind of people you are going to choose. We want to know in advance. We want to be able to turn them down if we want to." I always answered, "It would be unwise to sort of stoke up political storms and political fights where none need exist at all, by spelling out all of this in the statute. The whole thing is taken care of by using the word 'may,' instead of 'shall invite.' Also, it's taken care of by not having the state legislature establish the post to be filled by the Federal Secretary of Agriculture. None of that is done. Instead, the entire authority and power is left with the state by the use of the word 'may.'" This usually satisfied the committees. I don't recall a single instance where this provision was stricken out of the bill. Now, I'm not certain of that. I'm speaking now about what happened 40 years ago. There may have been some states that did strike it out as they adapted the law to their own requirements before making it a statute. I don't recall any. This I do recall. Although most or all of the states retained the provision as is, what gradually happened was that for awhile in nearly all states, the Secretary of Agriculture was invited to designate someone. He very often designated the Soil Conservation Service's state conservationist to serve on the state soil conservation committee, thus greatly strengthening Federal-state cooperation in this area. This was the creation of a position and the appointment of a member in the governing arrangements within the state that would strengthen such federal-state collaboration. In addition to the fact that they both would be providing money to finance every single district.

What gradually happened is that the states became more and more restive about exercising this authority. They stopped asking the Secretary of Agriculture when the term expired, or the member died, retired, or whatever. When the vacancy was created, they didn't ask the Secretary to fill it. My own experience doesn't enable me to tell you what happened after that. You remember I left the Department of Agriculture in 1942. I had next to nothing to do with the soil conservation program or the soil conservation districts during the war while I was with the War Relocation Authority. Thereafter, I went into the State Department and was working on international technical assistance and the Point 4 Program. In late 1953, I left the Federal Government entirely. I went into private law practice in 1955. In 1953 to 1955 I was on the faculty of the University of Chicago, in a committee study of technical assistance in Latin America.

But in 1955, I went back into private law practice. Within a year or 18 months, NACD, the National Association of Conservation Districts, retained me to be

General Counsel of NACD. As a private lawyer in private practice, operating on a retainer basis with NACD, it now became my responsibility to give legal advice to every one of the districts. Almost immediately, the state soil conservation committees came in. As you know, within every state, the districts are organized in a state association of soil conservation districts. The state associations of districts began to send legal questions to the general counsel of NACD. In many cases, individual districts sent legal questions to me in that capacity. That brought in the state committees, because state associations of districts worked in reasonably close collaboration. The collaboration should be stronger, but they've always worked, and still do, in close collaboration with the state committee. That brought me back into the districts program from another door. During that period, this kind of a question never was referred to me. I wasn't acutely aware of it. Don Williams and his successors as Chief of Soil Conservation Service would know from their own experience why that particular provision of the law died a natural death.

We made it possible for it to have an easy burial, by the very use of the word "may" instead of "shall". Looking back on it however, I still don't think that was an error. I don't think it was a mistake on M.L. Wilson's part. He made the decision to use "may" instead of "shall." He foresaw, as a matter of fact, that the whole provision would probably be killed routinely by nearly every state legislature if we said "shall" instead of "may." He said, "I'm not certain that the country is ready for that kind of an intimate marriage of personnel appointments between the Federal and state government." He said, "The only instance of that kind that I know does occur is in the Extension Service." That took an Act of Congress. That came later. Namely, that personnel of state agricultural extension services became entitled, on retirement, to certain retirement benefits under the Federal retirement laws and were treated as Federal personnel for certain purposes. That state people would be treated as Federal people definitely required legislation. Only an act of Congress later made that possible.

HELMS: Was it in Mr. Wilson's mind or yours that somebody from SCS would be the logical appointee of the Secretary of Agriculture?

GLICK: I just don't recall. Also, I don't recall whether we discussed that. I also don't recall whether we thought of that as an advantage or a disadvantage. I'm not sure. Certainly I didn't foresee that the state conservationist of SCS would be a logical man for the state people to think of to invite under this provision.

HELMS: While you're talking about that, I'm not even sure they had come up with the term state coordinators yet.

GLICK: Ah, state conservationists? Yes.

HELMS: I'm not even sure you had the ...

GLICK: Basis for thinking about it.

HELMS: ...thinking about it.

GLICK: I have no recollection whatever that we gave any thought to that. Any federal person could be made a member

of a state committee. I'm trying hard to recall conversations of a long time ago. I made no notes about it. I'm not sure I saw then how important this might turn out to be. It just seemed to us a way of improving the operations of the state soil conservation committee.

Now, you may recall that in my speech in New Orleans, which dealt with means of strengthening future operations of soil conservation districts, I called attention to the importance of strengthening collaboration between the state soil conservation committees and the state associa-

of that section for the duties and powers to be carried out by the state Soil Conservation Committee. The draft bill first authorized each such committee to offer appropriate assistance to the supervisors of districts, and then to keep the supervisors of each of the districts informed about the work of the others and to facilitate an interchange of advice and experience. Then subsection 3 says this, "to coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation." The significance of that language is, of course

Next, there is spelled out elaborately in section 5 the procedure for creating soil conservation districts. This has to be, of course, elaborately spelled out. This is a very important step that a state takes. There are various kinds of what the political scientists call, special districts; "special" meaning that they are not general units of government. Even the soil conservation district is what a political scientist calls a special district, because it doesn't have the general powers of local government within certain stated boundaries or purposes. Instead it's a

that assistance. But the statutes also provide for conservation ordinances and public regulation of private land use. Who then is entitled to a vote in the referendum on whether a district should come into being? Obviously, not only the owner, he may be an absentee landowner. The tenant may be far more the important operator. The tenant may actually have a larger financial interest at stake than the owner. For the owner it's the market value of the particular acres. For the tenant it's the cost of all of the equipment and machinery and credit for

Because they may decide that this referendum passed by a vote of fifty and a half to forty-nine and a half, and therefore, opposition to the district is as great as support for the district. It's not likely to be able to function effectively. The state committee may then refuse to establish that particular district on the basis of that referendum. It may wait until public opinion in the area, the need for erosion control, the eagerness to have Federal financial aid in carrying on erosion control operations, is great enough to persuade a working majority, a substantial majority.

HELMS: But why not come up with a figure two-thirds?

GLICK: That is the alternative frequently used. I don't recall definitely now. I have to be careful as I go, not to in-

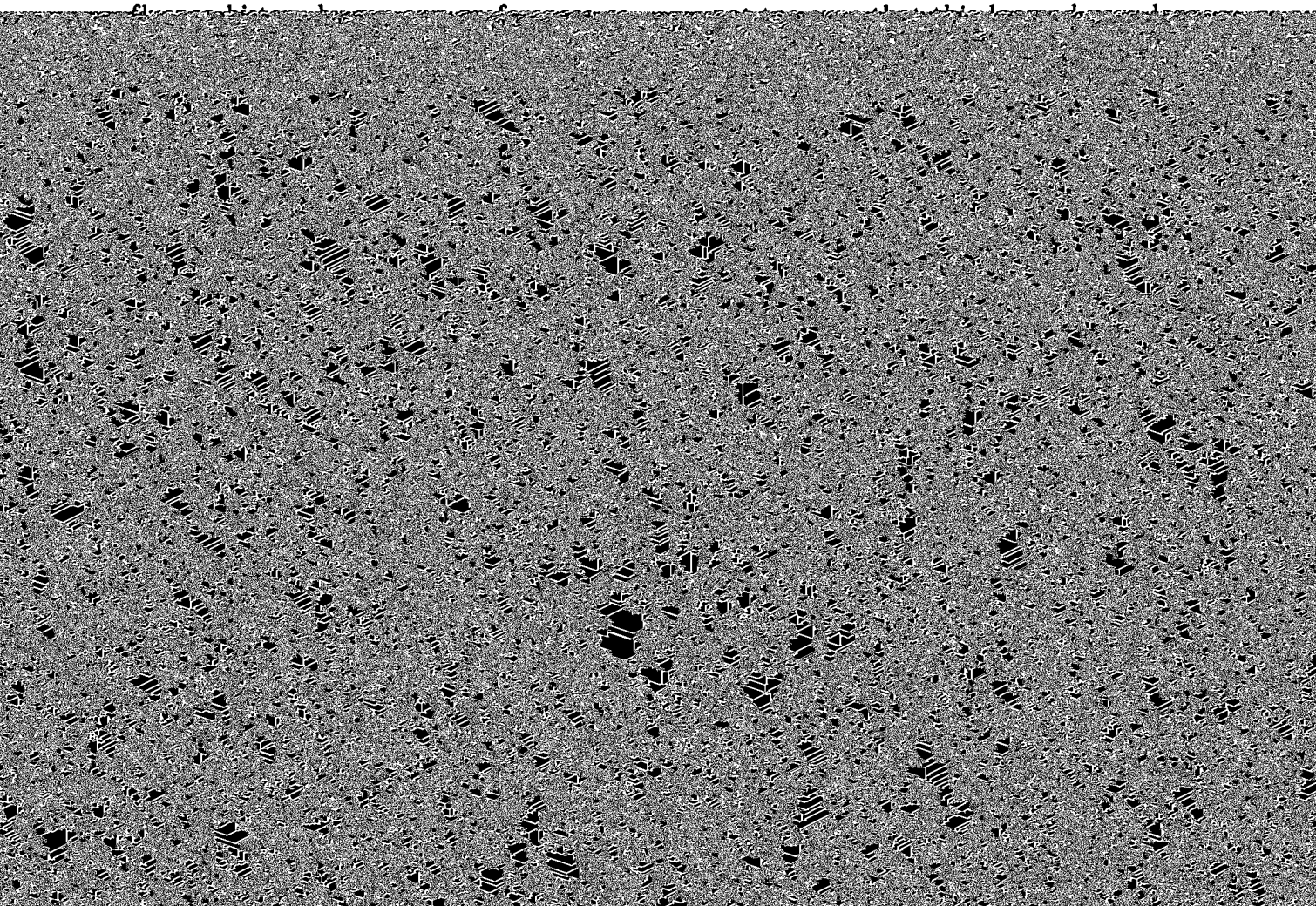
decisions, I don't think that would have been a constitutional problem. The referendum could have been made conclusive and I think the courts would have sustained it just as well.

HELMS: But there was a question that it might be taking too much of the state's power away to let the local unit decide entirely on their own?

GLICK: No, you see, it's the state committee that would be establishing the district.

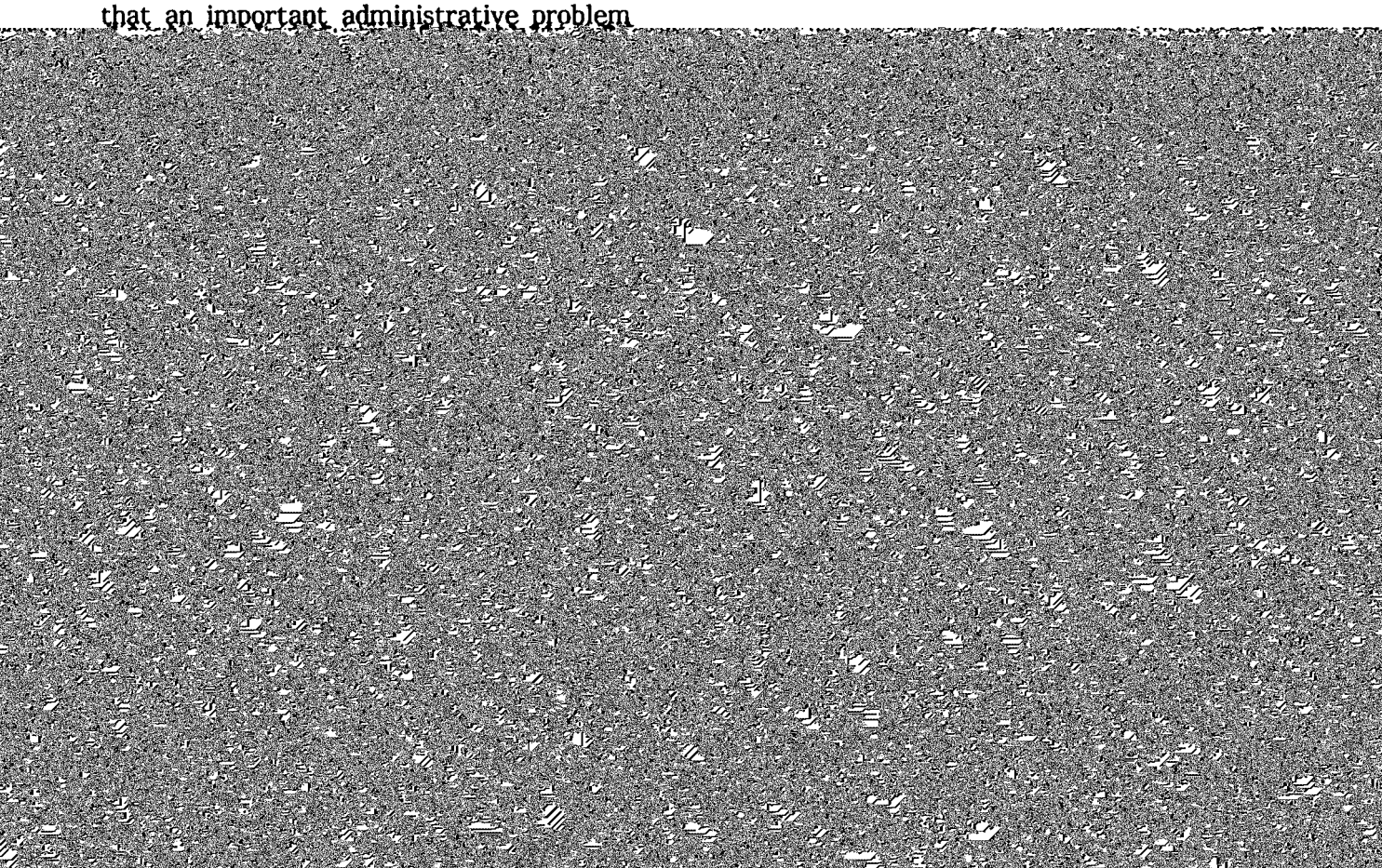
HELMS: But that's the .....

GLICK: Ah yes, that's the landowner. Too much of a delegation of legislative power to those eligible to vote in the particular referendum. I think the courts would sustain that, as of today. And I'm



trict, probable expense of operations, and such other economic and social factors, as may be relevant to such determination." There was no delegation of legislative powers to the voters in the district.

We have the next important point, in subsection (f). Again, relatively novel. The bill says, once the district is established, the state conservation committee shall appoint two supervisors to act with three supervisors elected as provided hereinafter as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body corporate and politic upon the taking of the following proceedings. Many of the states, when they came to consider the recommended standard act, shied away from having three elected supervisors. Some shied away from having the two appointed supervisors. In some of the states now, all of the supervisors are appointed; in other states, all of them are elected. M.L. felt strongly that an important administrative problem technical operations that the district will be carrying out. The average farmer knows a great deal about farming. He doesn't necessarily have a great deal of information about terracing. He knows a good deal presumably about strip cropping and contour furrowing. But he knows much less about flood control over an entire watershed area. Two supervisors, a minority, you notice, could be outvoted by the other three supervisors on any question that comes before the district. Certainly M.L.'s reason for wanting two of them appointed is he assumed that the natural result would be those two would be selected because of their expertise in erosion control. At the state committee, he assumed they would discuss this with the extension service. They would know people who live there, own lands in the district, or operate lands in the district, or are close to the district, who do know the kind of technical facts that ought to be brought to the attention of a board of supervisors of a district.



such and such. My constituents don't feel that way." Where there is a division of opinion among the constituents, in most cases, that's not much of a problem for the elected representative. He has the freedom to decide because he'll have as much support as opposition among his constituents. When a Senator Fulbright of Arkansas votes on a civil rights ques-

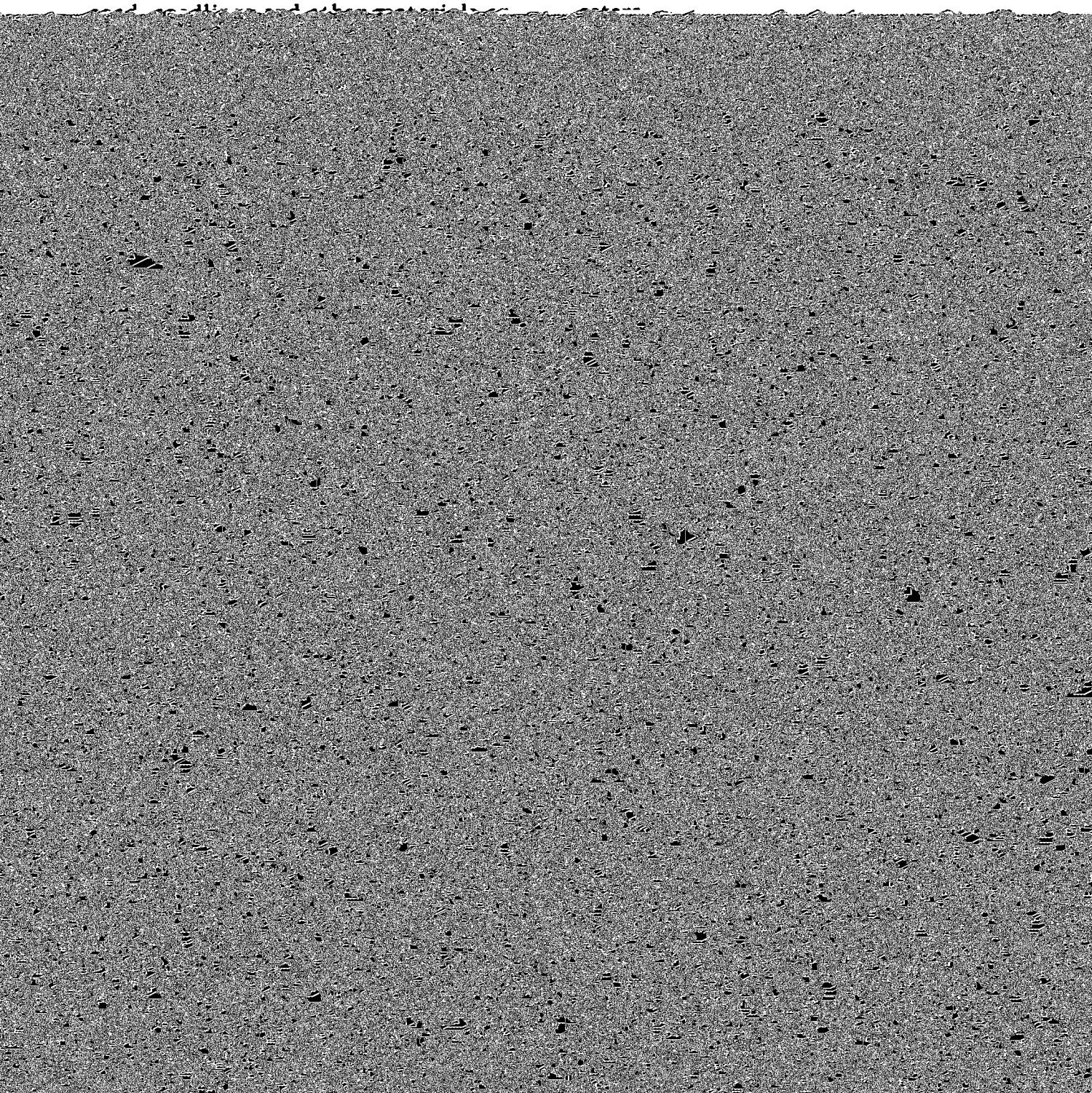
war and peace. The Vietnam War came into that consideration, I believe. He would stump his state. He could "stump it" by making one speech, explain why he felt as he did feel, and say, "Now, I urge you to reconsider if you feel opposed to what I am about to do. But I feel I must vote this way." Aiken could do it and Norris could do it. Senator Jackson of

GLICK: Section 8 has a number of Subsections. I'm going to go into each subsection and then restate as briefly as I can what powers are conferred upon district supervisors, subsection by subsection. First, the districts are authorized

beneficial that we did have this in the bill. In most of the hearings, as I recall, in the various state legislatures, this became an issue during the hearings on the bill. It was fortunate that people were able to say, we've anticipated that

girded around with the protections and precautions spelled out in subsection 5.

In subsection 6 we have a brief subsection but a very important one. This is in effect the heart of the project operations. It authorizes every district to make available to land occupiers within the district agricultural and engineering machinery and equipment, fertilizer,

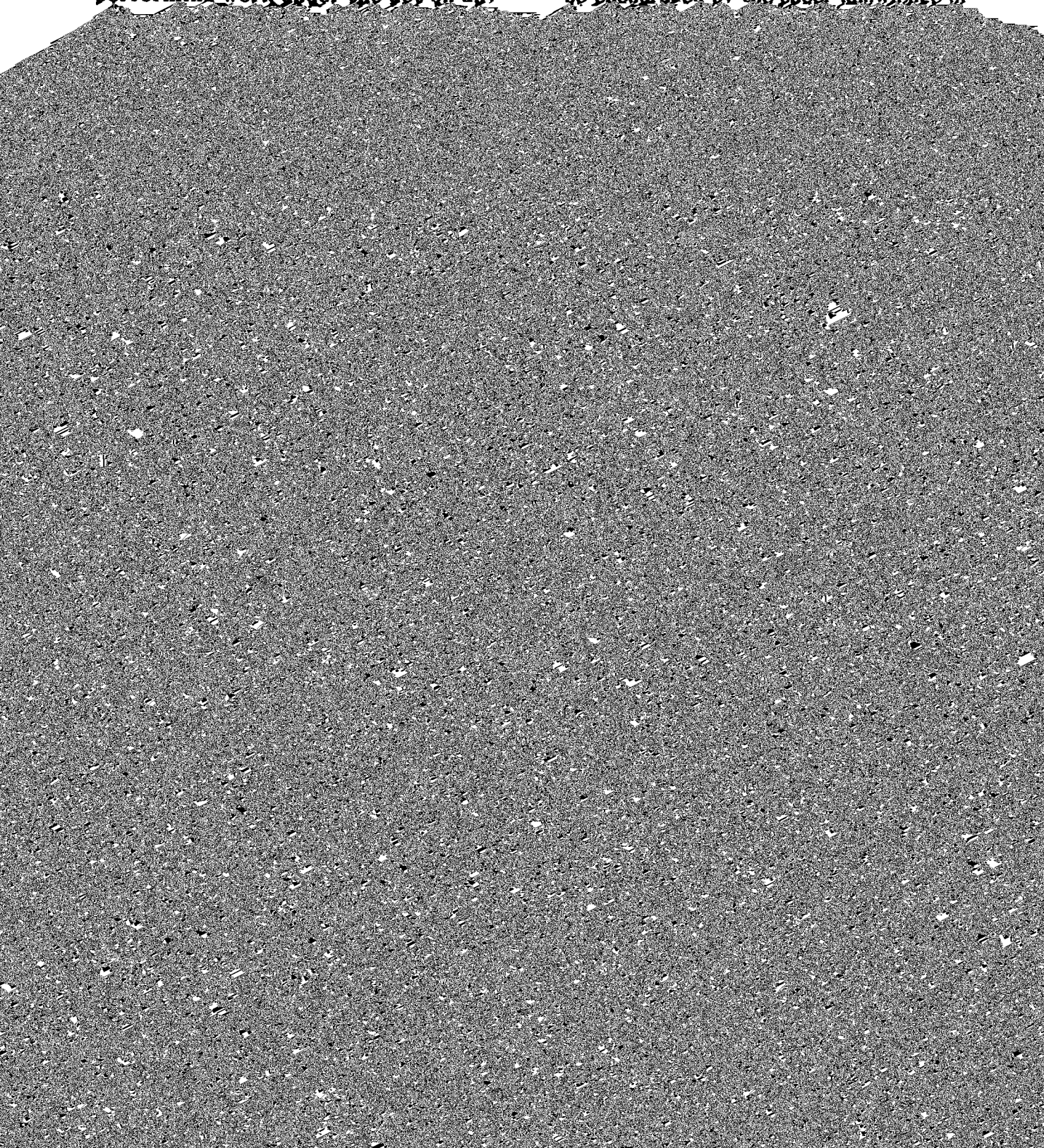


In subsection 8 the districts are authorized to develop comprehensive plans for the conservation of soil resources and the control of erosion. Again, "which plans shall specify in such detail as may be possible, the procedures, performances and avoidances necessary or desirable for the effectuation of the plans, including engineering operations, methods of cultivation, growing of vegetation," et-

10 authorizes the districts to sue and be sued.

There's a very important Subsection 11. It provides that as the condition to extending any benefits under the act, or to performing work under the act on any

vice, state conservation agencies, Federal and state extension agencies, etcetera, I have frequently urged the introduction of training programs that would assist district supervisors in reading and studying their own enabling act so that they would be encouraged by the sheer knowledge of



because they have not been widely used. I think it's worthwhile to discuss that point a little. Otherwise, I will seem to

that it's called an ordinance. So the word ordinance is palatable.

Similarly, the word conservation is also

conservation ordinance that is proposed for adoption. No district is then given power to adopt such a conservation ordinance until a majority of the land occupiers of the district vote in favor of it. Even after a majority of the land occupiers of the district have voted favorably in a referendum, the bill goes on to provide that the supervisors must then reexamine the question of the desirability and need for the proposed conservation ordinance, and then determine whether or not to put the ordinance into effect. Why? Well, it occurred to us that there may be a very small turnout of voters, of land occupiers, voting in the referendum or broke that contact, merely by the fact that he came to the Department of Agriculture, worked in the Agricultural Adjustment Administration, then became an Assistant Secretary of Agriculture, which he was at the time we were considering this proposed bill. He later went on, of course, to become Undersecretary of Agriculture, and still laterbecame Director of Agricultural Extension, until he retired.

The sheer adoption of land use regulations is thus carefully prescribed and circumscribed in section 9. What a conservation ordinance may contain is care-

spread of public regulation of private land use throughout the country. He said that putting people in prison and fining them, even if the courts decide that they have to do it because of the importance of erosion control, isn't going to solve the problem. The lands will continue eroding even though the fines are paid. Subsection 11 provides for this. Where the supervisors of any district shall find that the provisions prescribed in an ordinance are not being observed on particular lands, and those particular lands are key lands, in the sense that failure to control erosion on those lands will interfere with erosion control on adjacent lands--the lands may be, for example, at the heads of hills, or the topography is such that certain lands are crucial--they are the lands of the first priority for extending public funds in an effort to control erosion. They may be the very lands that the occupier will be unwilling to cooperate with the district on. So, provision is made in section 11, that the supervisors may go to court and ask the court, not to penalize the land occupier, but to authorize the supervisors to go on the land and do the work directly themselves. Then the supervisors may recover the costs of the work that they have done with interest at the rate of 5 percent per annum from the occupier of such lands.

M.L. felt confident that if the county agent can explain to the land occupier. "You see, you know that we are not going to enforce this kind of provision all over the country, but only on key lands, the ones that have to be brought under control if the program is to succeed at all." As for those lands, the districts will want to go into court. So then they can say to the occupiers of those key lands, "You have nothing to gain by refusing to cooperate. Your refusal endangers not only yourself. You have a right to go to hell your own way, but you don't have a right to drag your neighbors to hell when they want to get the work done. Your lands are in just such a situation where if you don't cooperate you will be forcing your neighbors, the district supervisors, to go on your lands, do the work and collect the costs from you. And that will cost you much more than if you do the work yourself."

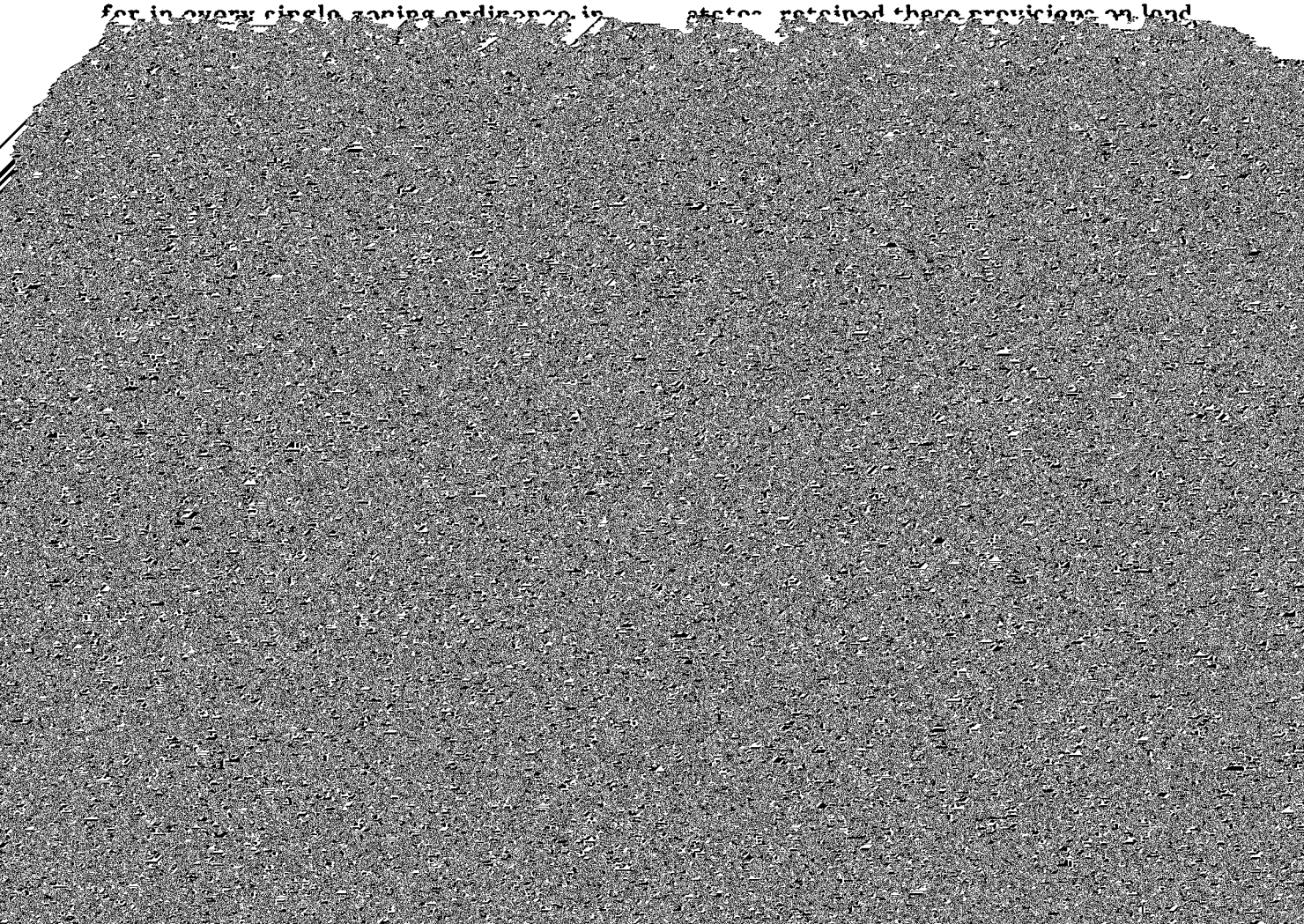
So this provision was written in with that in mind, as something that would be available to the county agent and the district supervisors when they talked to farmers. What I have always thought was very significant about the state soil conservation district laws, are the elaborate ways in which the law tries to anticipate problems of administration, problems of public acceptance, problems of public education, and to facilitate education, facilitate obtaining of willing consent from landowners, resorting to compulsion and penalties only as a last resource. Again, I think it would be highly educational in public administration if supervisors would study these sections of the act.

We then provide for the establishment of boards of adjustment. This is an idea adopted from zoning ordinances. Everybody is familiar with zoning ordinances in cities and counties. By this time, in the 1930s, everybody had learned that zoning ordinances are very, very useful and valuable. Yes, you have to comply with a zoning ordinance anytime you want to build a house, but in the long run, it's beneficial. It protects the areas that are

zoned. It benefits the landowners more than it throws burdens upon them. They were quite acceptable. But from the zoning ordinances we learned in turn that ordinances, like statutes, have to be written in general terms, because you are dealing with a great mass of different kinds of lands. An ordinance can therefore become very unreasonable in practice unless it's tailor-made to fit the particular situations.

Well, how do you tailor-make an ordinance? Well, the zoning people had developed from experience that you can establish a board of adjustment for anyone who finds that a zoning ordinance is absurd when applied to their land—it may suit most of the land, but on his land there are special circumstances and special adjustments are required. Therefore, boards of adjustment are provided for in every single zoning ordinance in

People glancing through the bill would say, "Well, look what a very large part of this bill is devoted to land use regulation. This must be the real reason for this statute. This must be the real secret behind the interest of the Soil Conservation Service and the Extension Service in asking for this new legislation." As it turned out, this was a bone of serious contention in every state legislature where the bill was introduced. The hearings, therefore, always show many pages devoted to the analysis and discussion of this issue. The Department of Agriculture had to train the people in the Soil Conservation Service, and offer many recommendations to the state extension services, on how to explain and how to justify this section. I'm happy to be able to report that after going through all this kind of a legislative tangle, state after state after state, 33 of the then 48



vation ordinances are going to be adopted in this state. And I think there are as many as six or seven certainly, maybe more, that require anywhere from two-thirds to 90 percent favorable votes in the referendum on a proposed conservation ordinance.

That led, of course, to another question. Suppose the state drops the provision for land use regulations. Will SCS, nevertheless, cooperate with the districts in that state in order to carry on the project powers? There were two strong schools of thought. M.L. never wanted to give up on including this in the bill. He said, "This is very important. I believe it can be sold in the sense of being explained so that the opponents will understand it and favor it. We ought not to give up without trying, but what do we do in a state where they have adopted the law? They are organizing districts. Districts are ready to carry on the project powers. Shall SCS refuse to cooperate?" The natural answer that he arrived at was, "We'll cross that bridge when we come to it. Let's by all means retain these provisions. Let's alert everybody to the need for a strong public education program, strong, intelligent, sensitive administration of these statutes. And then we will decide."

That's about the way it worked out. The project powers turned out to be extremely useful and effective. I have read a number of articles dealing generally with public regulation of private land use that tend to make exceptions for land use regulations of this type, not always singling out soil conservation district conservation ordinances, but nevertheless the regulations of this type. They are usually hedged around sufficiently so that they are not unreasonable either in content or in administration. But then what happened is that SCS never had enough money to make assistance available to every land occupier in a district who came asking for a conservation contract. The state legislatures in appropriating money to help finance the districts rarely appropriated generously money for these purposes.

HELMS: You are not just referring to the salary of the individual technician, but money to put into the work?

GLICK: Yes. Money to make available to the districts to cooperate with land-occupiers. The districts therefore found that in any one year, after they had already signed contracts to use all the money available to them for helping land occupiers control erosion, they still had a backlog of farmers and ranchers who were asking for help in carrying on erosion control operations on their land. The districts had to tell them, "We've used up all our funds. You are high on the list. As we get more money, or as we complete operations, the costly part of the operations, on a number of lands, we will be able to add new farms to our work program. Then you'll come on." This psychological situation developed. You don't have a favorable environment for asking farmers to vote land use regulations to deal with the recalcitrant farmer, when you are not even able to help all those who are anything but recalcitrant, who are continually knocking on the door and saying, "Look, I'm ready. I'm doing all I can, I need help." And the districts have to ask them to wait. You didn't have a congenial environment for regula-

tions.

HELMS: You are saying had there been more money available to do the work, there would have been more of an attitude of using this where needed?

GLICK: Precisely. In a few states they did reach the point where they were pretty well meeting the need for cooperating with farmers who were ready to cooperate. Yet there were lands where the farmers were not ready to cooperate, but those were key lands and badly needed erosion control.

At the high point of activity in connection with conservation ordinances, I think such ordinances were adopted in as many as 10 or 11 states. Even today as we speak, conservation ordinances are in effect in some four or five states. But in the main, considering the fact that we now have the districts law operating in 50 states, these land use regulations or conservation ordinance provisions have been only a small part of the total erosion control effort in the country, for the reasons that we have already discussed adequately.

We have covered the powers of the districts and I suggest we go into your questions. If your questions don't raise some of the other points on which I have made notes, I'll tell you about them.

HELMS: Appointed members among the district supervisors. It didn't really work out that way in most places, did it?

GLICK: No, it didn't, although again, this varies greatly from state to state and even varies greatly from year to year and certainly from decade to decade. I don't know today, although I think SCS knows, how many states have appointed members of their boards of supervisors in the various districts. Many state conservation agencies who were coordinating the work of the districts, and many of the boards of supervisors themselves wanted all of the supervisors to be elected, rather than three elected and two appointed by the state commission. In a number of states, I have the impression that it's somewhere in the neighborhood of 15 to 20 out of the 50, they dropped the provision for appointed supervisors. I think that's an unfortunate mistake. Erosion control is after all a technical subject. Much is known by the professionals that is not known to the average farmer or rancher. If a state commission has power to name two supervisors on every district, farmers still have majority control. Three of the five supervisors have to be elected. Any ideas proposed by the professionals that the three don't like will be voted down in any meeting of the board of supervisors. We think the democratic controls are adequately safeguarded by provision for election of three of the five supervisors. Not having these appointed supervisors has provided, generally, a weaker level of administration by supervisors than could have been obtained. This is a personal opinion.

HELMS: Did any of the state acts make any useful additions to the standard act, any improvements?

GLICK: Yes. I recall specifically that this was true in Iowa and Wisconsin. SCS can give you the names of a number of other states where this is true. A num-

ber of states strengthened the act by spelling out additional activities. Wind blowing was a special problem in many areas. Local flooding was a serious problem in others. Such provisions were therefore offered in those states.

HELMS: Were there people around who wanted a more national land use planning effort rather than this local democracy type thing?

GLICK: Yes, yes. You've touched a very important point and I don't recall that we've discussed it. M.L. Wilson was very much aware that he had a major selling job to do within the Department of Agriculture on this notion of his that the Federal Government should encourage the states to take over the major responsibility in erosion control and to provide for the organization of local districts to carry out these operations. In particular, he expected strong opposition from SCS itself. Hugh Bennett, the chief of the Soil Conservation Service at the time, had a national reputation as an expert and prophet in the area of erosion control and soil conservation. The SCS staff had the general reputation of being the largest and most capable group of technical experts on problems of erosion control in the entire country. They were already authorized and responsible under the act of Congress establishing SCS to plan for and carry out necessary erosion control operations all over the country. The argument was, "Why disrupt all this?

Anticipating all of this difficulty didn't change M.L. Wilson's opinion that it was very much necessary to make this kind of a move. His problem was, "Is there anything we can do in our proposal itself, before we publish it, that will soften the opposition or will help the opposition join us?" He made mental notes that he must carefully talk to the Secretary of Agriculture, to the Agricultural Extension Service in Washington, to the state extension agencies throughout the country and explain why it was wise to do this. You remember I said at the very beginning that M.L. began by saying no Federal agency in Washington is going to be able to carry out the detailed kinds of operations necessary all over the country to control erosion all over the country. He felt that this is not the kind of a program which can be centralized in Washington and be effectively carried out. After all, you couldn't just adopt a lot of regulations. A Federal agency can draft regulations, publish them, and try to enforce them. But is this the way to obtain erosion control in 3,000 counties in the United States? So he felt that this kind of delegation was important. But he anticipated that the other argument would be made, and it was made.

Should we not talk, then, about what happened after M.L. Wilson was satisfied on the kind of bill that he had drafted. He recognized that he was going to get nowhere until Secretary Wallace had made this a part of his own program as

and there. He had great respect for Secretary Wallace. They were almost lifelong friends. They knew each other's minds and abilities very, very strongly.

Gradually and slowly, M.L. tried to persuade them of his views. M.L. believed that important social ideas cannot spring suddenly upon the people who will be

power?" I explained what I think I have already covered here: had the districts been given the power to tax the farmers and ranchers in their districts in order to have money enough to carry out erosion control operations, it is unlikely that state legislatures would have been willing to enact it at all. In the depth of the depression, with farm lands already in the opinion of most experts too heavily taxed, Secretary Wallace and the department Turn over to the districts what they would otherwise buy with the money that they would raise by taxation. Let the districts be responsible for administering the use of these resources in their district programs. You may remember that in the printed pamphlet on the standard act there is a long footnote on page 29, footnote 12. It says that the standard act contemplates that funds to finance the operations of the districts will be

needed by each district as immediate administrative expenses. Every district would have to rent an office and buy some automobiles for its technicians. It would need telephones and secretaries and stationery and what not. Just as a county has to finance its operation, just as a city has to finance its operations, every district is going to have to finance its operations. M.L. drew that line in his mind. He said, "Let the States provide the administrative costs. Let the Federal Government provide most of the money needed by the districts for operating costs."

Well, that inevitably raised this question. Should assistance by SCS to the districts be made conditional upon appropriations by the State legislature to give administrative funds to the districts? A strong case can be made each way. But finally what prevailed was this view, which M.L. Wilson came to accept, which Secretary Wallace felt strongly about, and which Hugh Bennett in particular felt very strongly about. He said, "This requirement that the State by merely adopting the law start looking for a regular, new substantial appropriation that it would have to make to finance every district that is established in the state under its law, will make state legislatures reluctant to adopt the act at all." "The main argument," said M.L., "that we have for persuading the states to adopt this legislation and persuading the districts to carry on these operations, is that we can subsidize it. We can give them financial help in these depression years."

The difficulties that the New Deal administration in Washington had in getting its various statutes enacted, after the first 100 days and their excitement had subsided, were very strongly in the minds of M.L. and everybody else in the Department who was working with him. It was decided not to write that in as a condition in the bill. There isn't anything in the act that does do that. This has been one of the major problems that the districts have suffered from ever since. Many states were not generous in providing administrative expense money for the districts. It's reasonably obvious that the states felt the Federal government very much wants this program. They are already providing millions of dollars every year to carry on the program. They are providing nearly all of the operating money. Well, the administrative expense money is a small part of the total cost; let the Federal Government add this. Why shouldn't they? Why should they draw this line here?

M.L. felt that if the Federal Government provides all the administrative expense money, as well as the operating funds, there isn't enough of a strong link of the program to the policy-makers at the state levels to make them feel that they are the fathers of their state erosion control act and that they are entitled to the credit as erosion is controlled. The major contribution the states <u>can</u> make is the administrative expense money. So M.L. felt that this is a case where we had no alternative but to stand firm. Gradually, he felt, the states will take over more and more of the obligation to provide money, and the districts will become satisfied that they cannot get their local rent and telephone bills paid by Uncle Sam. They normally go to the state legislature for such administrative expense funds. They will gradually take it

over. This has remained policy to this day. Many of the districts in many of the states are not adequately financed. Many districts don't have their own offices. They share an office with the county agent or they share an office with a state conservation agency. For a long time, they shared office with the chief SCS person working locally.

That was certainly undesirable because it tended to have people speak of this as a Soil Conservation Service district rather than the soil conservation district. It tended to obscure and retard the development of independence by the districts and

Bennett said, "We're having increasing difficulty in getting increased appropriations to SCS for establishing additional demonstration projects." He said, "It will be much easier to get appropriations for SCS to assist state agencies and local districts in carrying on operations. Every single Congressman will be thinking of the erosion control program in his particular state. Every Senator will be thinking of the work to be done in his particular state. Therefore, we will be able to appeal not only to their broad national patriotism and their awareness of national problems, but to the local interests particularly in the case of the

them and they go on forever. The bureaucracy digs in its heels, etcetera. I know few instances that are as clear and as strong an illustration of the fact that where authority really needs to be delegated, from the nature of the problem, the Federal government, Federal bureaucrats, Federal bureau chiefs can be trusted to recognize and to move the laboring oar in getting movement toward such delegation.

It was right for Hugh Bennett to take some 8 to 10 months to mull over the whole idea of the proposed standard act and the proposed soil conservation districts. He was responsible, and we were asking him to make a decision that he and his own people could not do this without the help of state and local legislation. He had to be absolutely sure that he wasn't running away from his responsibility; that he wasn't making a mistake; that he wasn't creating a monster that wouldn't be subject to reason, wouldn't be collaborative, and wouldn't be cooperative. Therefore, there is certainly no valid criticism of him for taking months to make up his mind. On the contrary, he is entitled, I think, to far more praise than he has been personally given for

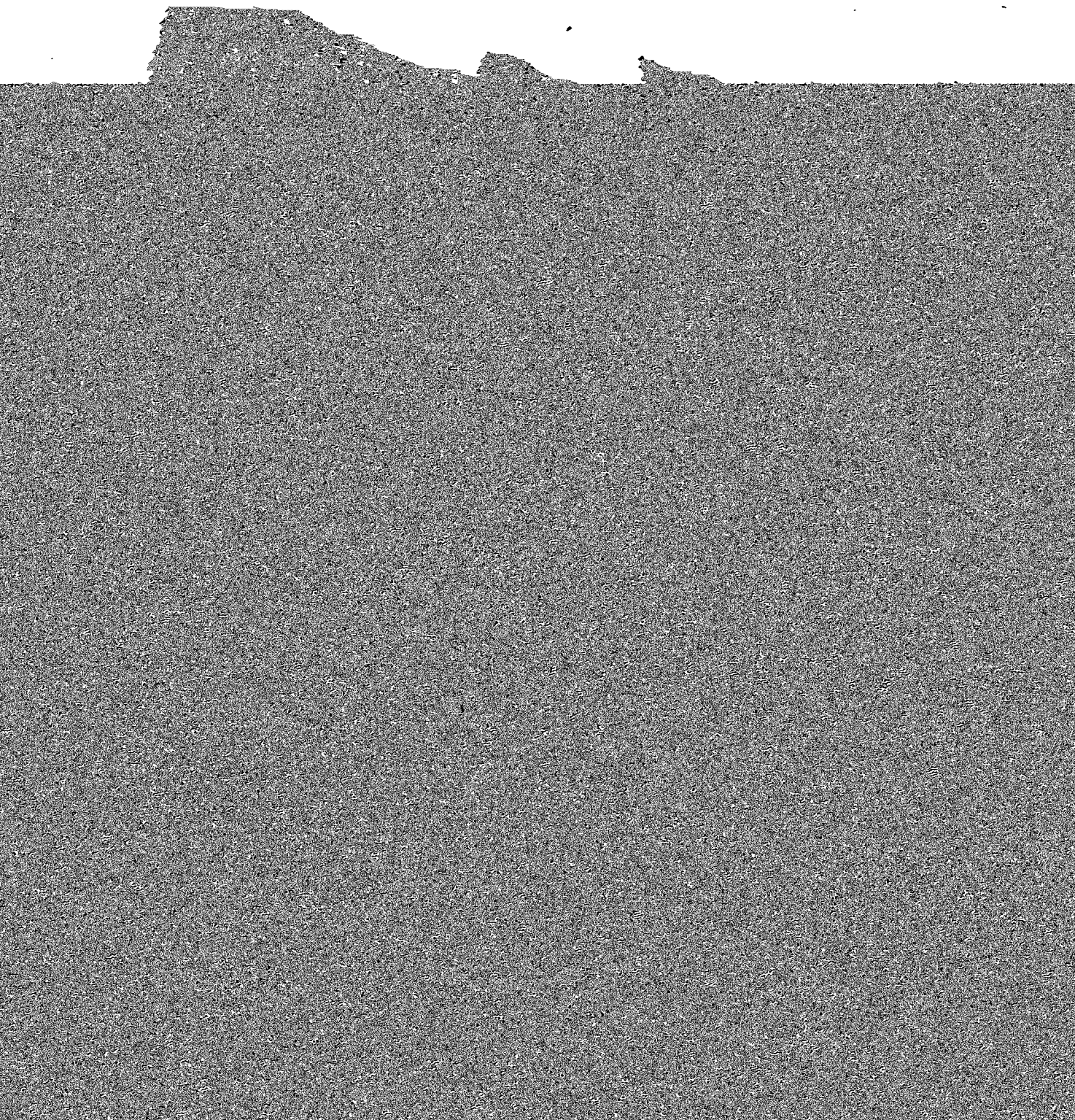
act?

GLICK: I drafted a proposed opinion of the Solicitor of the Department of Agriculture on constitutionality of the Standard State Soil Conservation Districts Law. This is an appropriate place for me to point out that although I have had to use the personal pronoun "I" so often, on legal questions, I wasn't the only lawyer in the Department of Agriculture to work on this. I had two able assistants, Sigmund Timberg and Albert Cotton. They were both lawyers on the staff of the Solicitor. They had been assigned to work with me. We three at that time were a small unit in the Solicitor's Office, called the Land Policy Division. Later we were to grow, of course, as the number of legal questions reaching the Solicitor under the state district laws grew. But during the two years that were spent on the drafting of the Standard Act, I had only two lawyers to assist me; and we three did it. A great many of the provisions in the districts law, were first suggested either by Sigmund Timberg or Albert Cotton. It would be tedious, and after 40 years it's very difficult, for me to recall exactly who first thought, for example, of the board

father of the policy. He was the father of the entire spirit and content of the districts' law. But I wasn't the father of all the legal provisions at all. I did my share, I hope; but I was enormously helped by both Sigmund Timberg and Albert Cotton. The entire opinion has been published as an appendix. The abstract of the opinion itself runs to a full

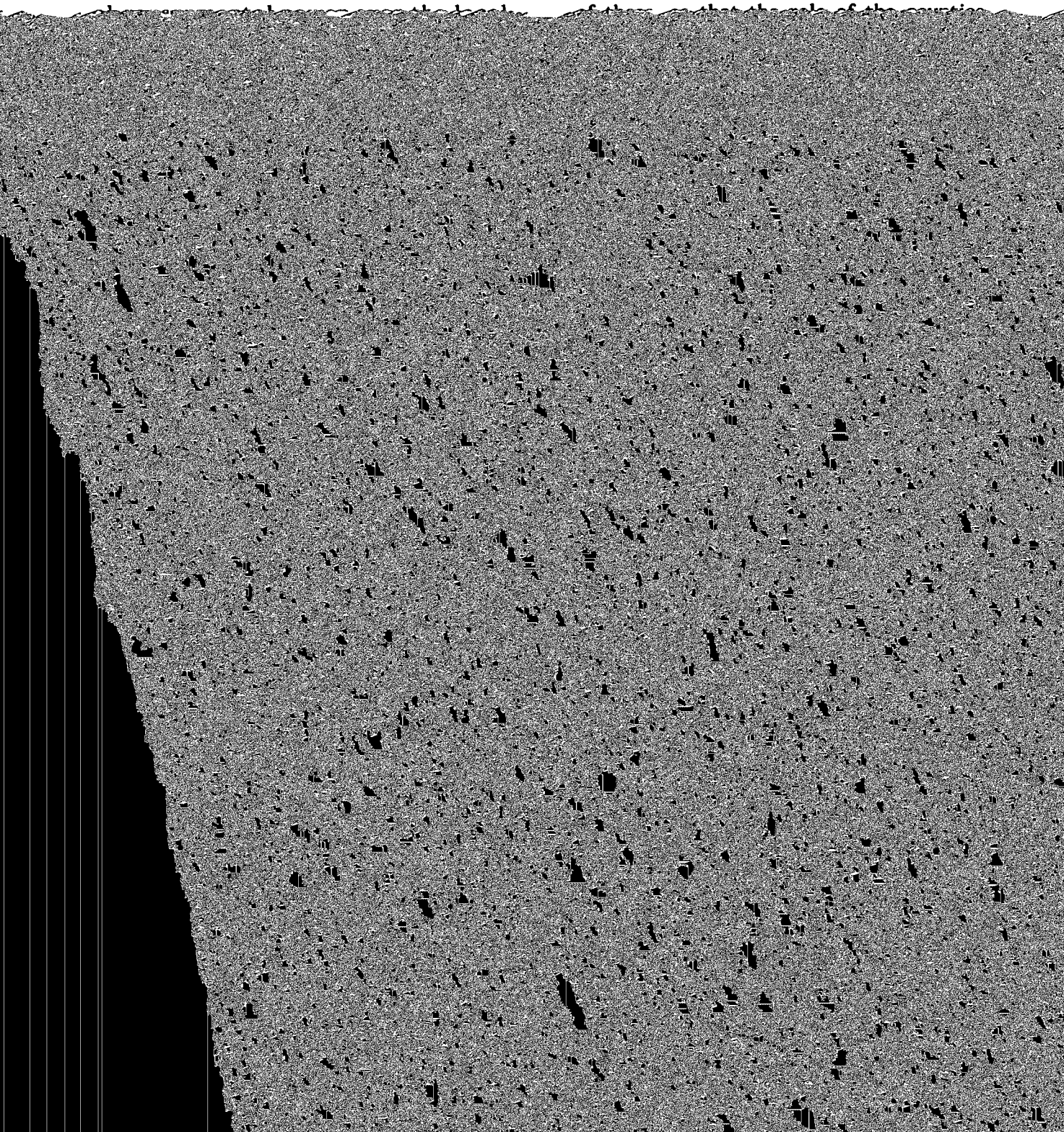
monies except for public purposes. Certainly appropriations for these statutory purposes have to be considered public purposes. Soil erosion control is a public purpose.

The next question discussed is, do the state legislatures have the power to provide for the organization of soil con-



give these additional powers to other special agencies state by state. In a number of states there are irrigation districts, and in others there are conservancy districts. There are a great variety of agricultural districts that the political scientists refer to as special districts, "special" because they do not have gener-

authority to define the boundaries of the proposed district. The state committee could then decide that the boundaries should be precisely along county lines. That's one alternative. Or they should be along watershed lines, which could be less or more than the area of a single county. Or it could be any combination



what actually developed is that in some states, although the law as adopted in that state didn't specifically say so, there was an understanding, sort of a part of the informal legislative history of the bill, that the districts would be established along county boundary lines. We have some states in which all the districts are coterminous in boundaries with the counties within which they operate. There are states, in which some of the districts are coterminous with counties, county boundaries, and others cut across them in various ways. There are some states in which there is no external, obvious formal limitation of the districts to county areas at all. Nevertheless, whenever a district is located anywhere, every acre within a district is bound to be an acre within a county somewhere. That's the nature of these 3,000 counties in the United States. Their inherent legislative and executive jurisdiction as counties extends to every piece of land within their boundaries, urban as well as rural, but certainly to all rural areas.

M.L., as a matter of fact, was frequently unhappy with the emphasis upon county boundaries in connection with the organization of districts. Not as a matter of jurisdiction. I've never known anybody with less emphasis on bureaucratic jurisdiction, or whose turf it is, than M.L. Rather, his concern was this. County boundary lines are not defined by reference to erosion areas, or natural watersheds, or subwatersheds. They are political boundaries. But M.L. felt that the

M.L. knew that some watersheds are so very large that they include several states. But M.L. was thinking about what sometimes are referred to as subwatersheds, but which are, more accurately in hydrological terms, independent local watersheds. Independent because so carved by nature. Their boundaries frequently change with the course of riverflow. But they are separate watersheds. M.L. hoped that most of the districts would have their boundaries coterminous with such watersheds. But he also emphasized that there was nothing to prevent several districts, whose lands together constituted a watershed, from collaborating intimately. Then, all you would have done was to have brought in more people into the governing process. That's all to the good.

In time, people began to feel that this is an argument about unrealities, It's purely theoretical or even semantic. In practice, since what we want to do is to promote intimate cooperation between districts and counties, between districts and watershed agencies, districts and other special districts of the state, districts and state conservation agencies, districts and Federal conservation agencies; not alone SCS, but also the Forest Service and the National Park Service, the Reclamation Service, the Bureau of Indian Affairs--since all of these will be collaborating intimately, the precise boundaries of any one of these units become a matter of relative insignificance. That's how it was more or less

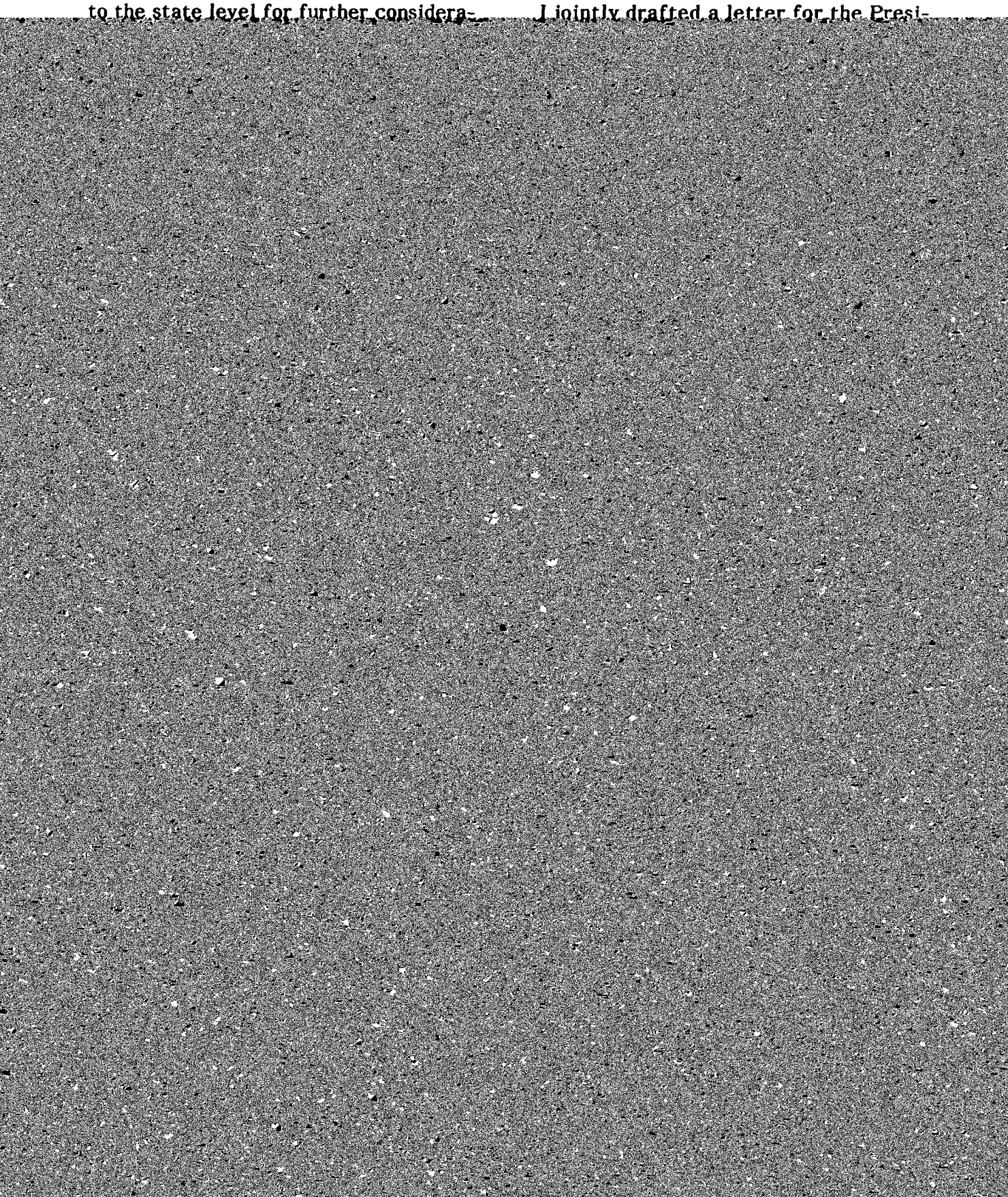
HELMS: What was your impression of how many of the directors agreed? Was Wilson, later on, somewhat surprised at some of the opposition that popped up, from not all but some of these extension services?

GLICK: I asked M.L. that question, and he chuckled the famous M.L. chuckle, and said, "In the area of cooperation between USDA and the state extension services, few things are formalized. Few things ever get embodied explicitly in docu-

equally, a strong assertive leadership from any of the state extension services. I think they will sort of lie back, and they'll say, 'Well, M.L.'s got this idea, Secretary Wallace has this idea, they are going to ask the state legislature. We'll have our chance to talk to the legislative committees and to the legislature. Let's see how things develop and then we'll know.' " He said, "It's the only answer I can give to your question." And I said, "Well, that's not a bad answer, M.L. You're not saying that you definitely feel

pamphlet, not just a sole initiative by the Department of Agriculture. Now, as we moved into the arena of transferring this to the state level for further considera-

recommendation to all of the states in the Union, ought to begin with the President of the United States. So M.L. and I jointly drafted a letter for the Presi-

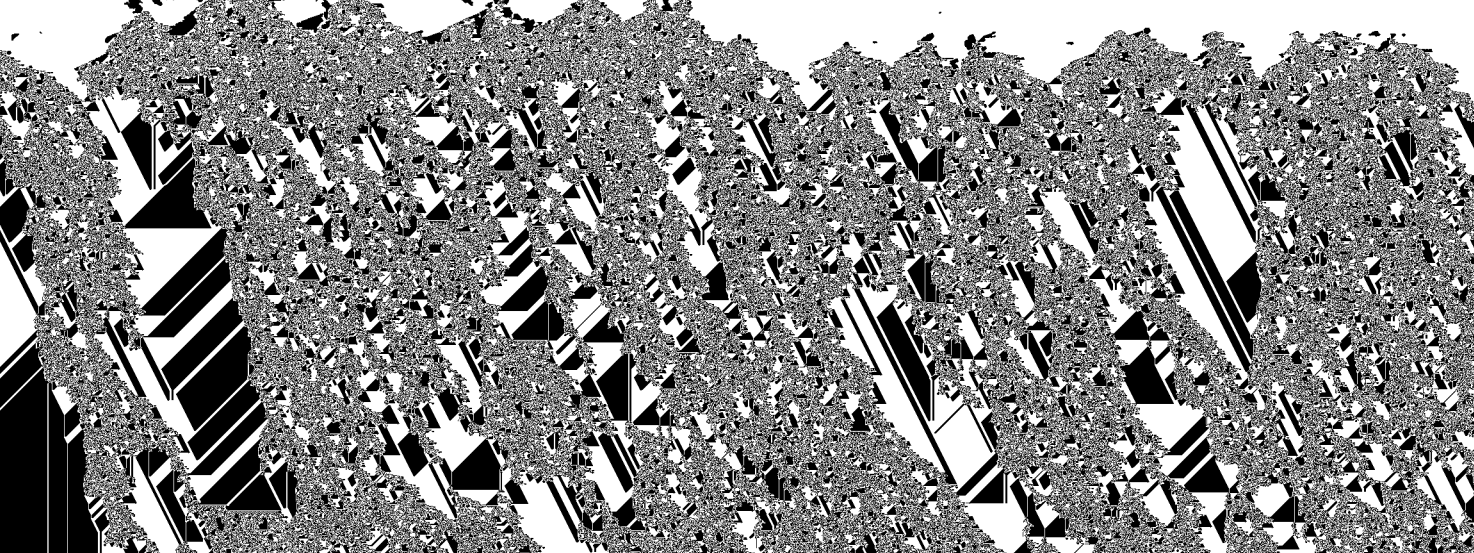


HELMS: What did Cohen tell you when you finally talked about it?

GLICK: He said that he thought that this was good legal thinking. Then began a process that extended over a full 10-year period. M.L., from time to time, would ask me to go to a particular state, always at the request of the state conservationist of SCS, and in several cases, at the request of a state extension director, in order to meet with them and talk about it.

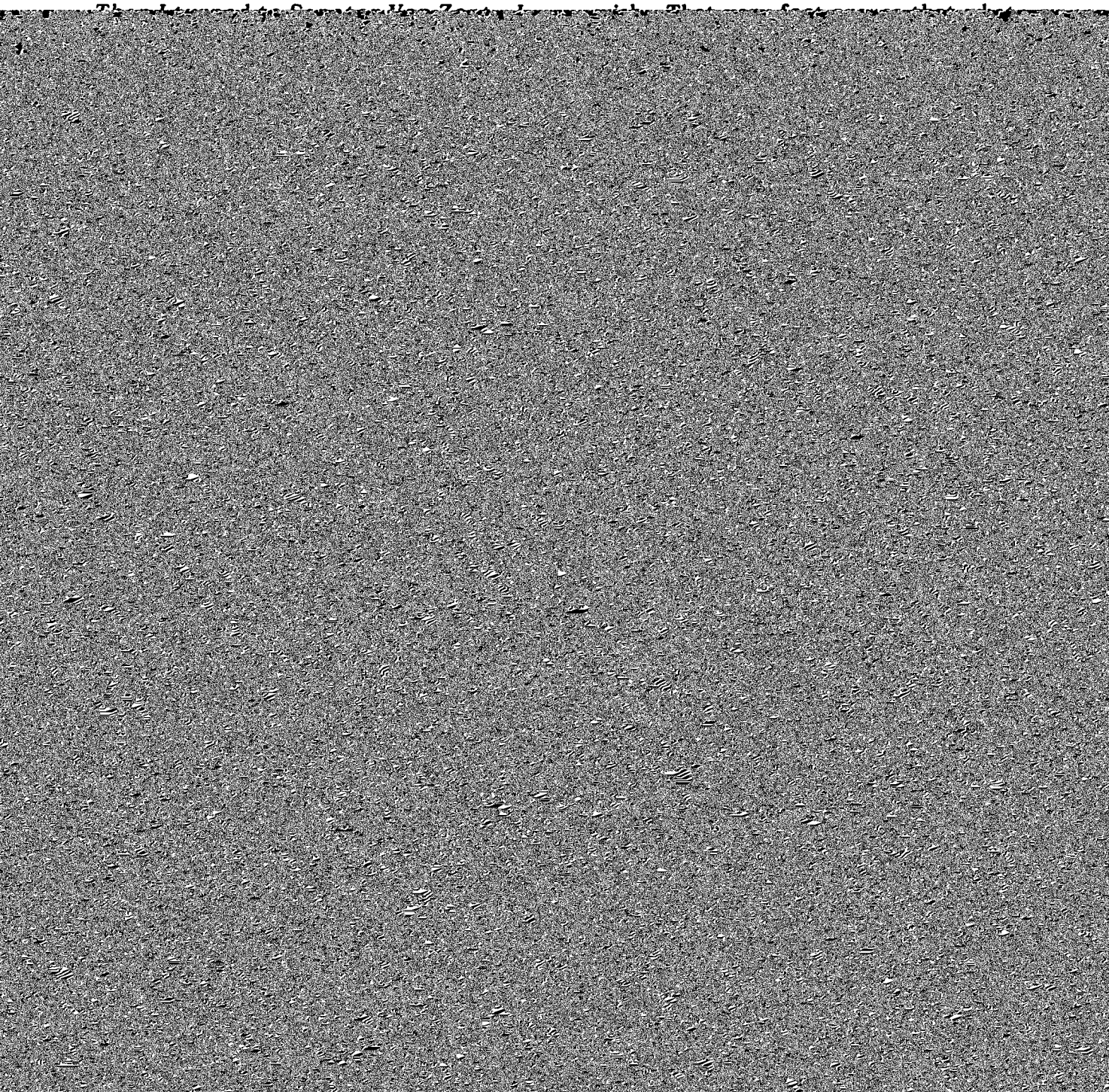
The most extensive and elaborate such discussion came at the invitation of a state extension director in Iowa. Dean Buchanan was then the state director. He asked me to come to Ames and stay several days. He called in several faculty members, including particularly Theodore Schultz of the Economics Department, who later transferred to the University of Chicago, and is now Chairman of the Department of Economics of the University of Chicago, Emeritus, having retired some years ago. Those conversations at Ames, Iowa, were very thorough, very exhaustive. M.L. told me, "If Dean Buchanan turns thumbs down on this bill, it's dead in Iowa. If it dies in Iowa, it will be a seriously wounded creature in all of the agricultural states. As a matter of fact," he said, "I don't know whether the bill would be able to recover would never have happened without Dean Buchanan's blessing. We started it off well."

The only other state initiation process that I think I ought to take time to mention here is in Texas. Louis Merrill was then State Conservationist of SCS in Texas. He told M.L. that he had talked with the state extension director, with the state experiment station director, with all of the state conservation agencies in Texas. They had talked to a number of the leading members of the Texas legislature. And he said, "We have run into a serious problem here in Texas." A Senator (I think the name was Van Zant, of the Texas Senate) was fearful that the hidden purpose behind the standard act was the control of agricultural production, that it was called conservation, called erosion control, but the real purpose was to tell farmers what and how much to grow of what crops. Merrill wanted the Secretary to send a representative down who would be authorized to speak for the Secretary in explaining what the standard act contained and what impingement it could have on control of agricultural production. Secretary Wallace had asked M.L. to designate someone to go down for that purpose and M.L. designated me. I got Mastin White's permission. I went down to Texas.



man who was tremendously well informed about agriculture in Texas, who was thoroughly and completely devoted to the farmers. He felt that he had seen a menacing danger in the bill that others with less experience might overlook. He wanted to be absolutely assured on that point. Fortunately, he had chosen a criticism that is totally a misconception. I summarized the provisions of the proposed soil conservation districts law.

Secretary Wallace would simply have called upon the Agricultural Adjustment Administration to undertake these chores and tasks. This bill calls for the establishment of local soil conservation districts, if people in the proposed district want one, and then calls for a referendum of farmers which may turn down the establishment of the district. Furthermore, it calls for every one of the 48 states to be able to turn it down if they



single state adapted the bill to local conditions. In some states, they entirely eliminated four very large sections of the bill, those that provided for the adoption of conservation ordinances, also called land use regulations. In a number of states, they provided that the district boundary shall be coterminous with the particular county in which the district

then notified.

After about three or four years of this process, SCS made this decision. SCS will cooperate with the districts in any state that adopts what they call a soil conservation districts law. If we in SCS don't like the law, we'll tell the people in the state about it and recommend the

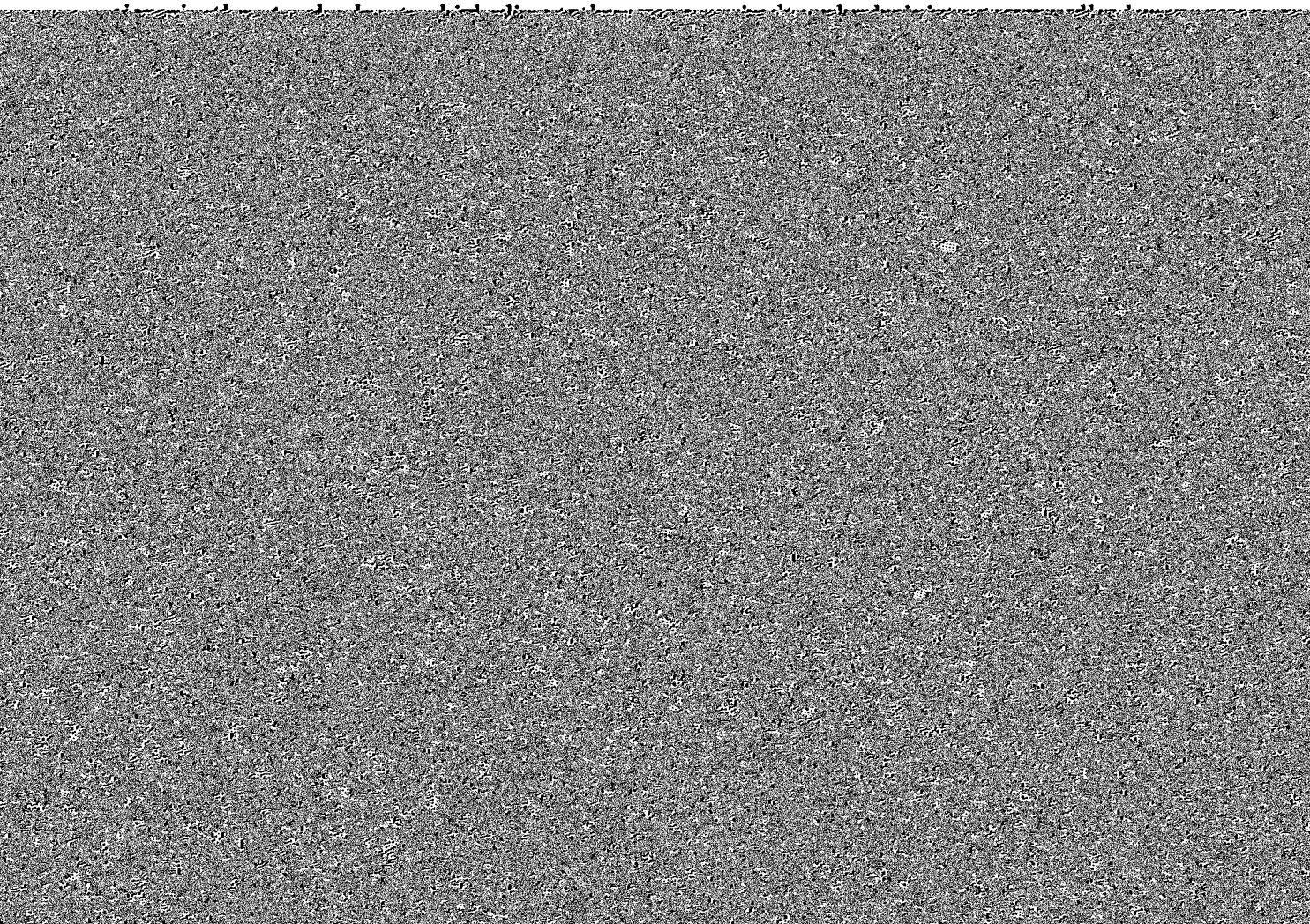
districts in that state. We'll cross that bridge when we come to it. We will not back up from the assertion we have al-

area of agricultural cooperation between Federal and state governments in USDA. No such formal policy ever became adop-

with them, no state legislature would know whether they need a soil conservation district law, given the fact that they have wind erosion districts, and irrigation districts, and agricultural districts of various kinds with various powers in erosion control.

The legal opinion included in the districts pamphlet discusses the relationships with those state districts, but not separately of course for every one of the 48 states. We found quickly enough that there was no reason to fear that the new soil conservation districts would duplicate or push out the activities of any of the existing special districts, whether it's a wind erosion district, or an irrigation district, or a water conservancy district, or any of the other special districts of a variety of names that existed. We quickly decided this is no problem. The provi-

Well, this had an inevitable effect in stimulating the adoption of soil conservation district laws in every state. Now that Hugh Bennett couldn't establish a demonstration project, by his own determination under Public Law 46, the only way SCS could come into a state to help in erosion control was by cooperating with the soil conservation districts. Therefore, the ball was in the state legislature's corner, in the state governor's corner, and in the state committee's corner. SCS could stand by cheerfully, optimistically, waiting for the state to bring itself into position where it could collaborate with SCS and invite SCS into the state to help. Of course, as you know, every state adopted a law, every state committee invited the Secretary to cooperate. Hugh Bennett received an invitation from every state. He accepted every invitation. The Federal and state



financial contributions in men, material, equipment. But they didn't make the decision. You know how often political commentators and critics say, "Once you've established a Federal bureau, just try to get them out of the area. They are wedded to that particular turf, and there's no terminating them." Here it was the Federal people that initiated the idea of transferring the responsibility for erosion control and soil conservation in a particular state, one by one, from the Federal government, from SCS, to the states. I think we ought to recognize that.

Second, I've mentioned that there were some ten or a dozen states that opposed adoption of the standard act in their legislatures. Missouri was one of the major holdbacks. Missouri may have been the last of the 48 states to come in, I don't know. This information has been

local agencies. Then they changed their minds. Maybe they merely decided they could be more effective working within a pattern that all the other states are using. Maybe they decided for other reasons. We do know, however, that the Board of TVA became supporters of the act and the statutes were adopted.

This Congressional prohibition of further demonstration projects has another great significance. Up to that point, it was only an executive branch decision that erosion control should be carried out by SCS in cooperation with the districts. The executive branch could have modified it or revoked that decision at any time. But suddenly, Congress said: after the effective date of this act (referring to the appropriation act that contained the provision) SCS shall not establish any new demonstration projects. SCS promptly moved as soon as the district law was

Federal or state or local agency. The pattern of cooperation by contract is now very well established in American agriculture, in American government generally. The common law idea of the contract is one of the great human institutions, developed over the centuries. We are as familiar with it as we are with our religion and our language. We take it for granted. Through such contracts, a district and a county can agree that they will jointly prepare a plan of erosion control and soil conservation activity in the state and that they will jointly modify that plan as needed. They can follow this joint planning with joint financing. The district can undertake financing indirectly in the form providing of personnel, equipment, and supplies. This is simply another way of administering a program, but it still amounts to joint financing. Having jointly planned and jointly financed, they can jointly administer. When a city is undertaking a large amount of construction work and has all kinds of sedimentation and erosion problems at construction sites, or when a city has other kinds of erosion control problems, even erosion control problems on city-owned lands, the city can then come in and it can become a three-way contract, the county, the district and the city, calling for joint planning, financing, and operating. I think this pattern has magnificent promise for the future.

The End